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KUALONO

Declaration of Covenants, Conditions, Easements and Restrictions

Declarant: Hanohano LLC

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**DECLARATION OF COVENANTS, CONDITIONS,  
EASEMENTS AND RESTRICTIONS**

This Declaration is made effective July 27, 2016, by HANOHANO LLC, a Hawaii limited liability company, whose principal place of business is 1300 North Holopono Street, Suite 201, Kihei, Hawaii 96753 (the “**Declarant**”).

**1. THE PROPERTY.**

1.01 Property Subject to this Declaration. Declarant is the owner in fee simple of **LOTS 1 THROUGH 57, INCLUSIVE**, as shown on **FILE PLAN NUMBER 2488** filed in the Bureau (the “**Property**”) as more particularly described on Exhibit A. Declarant believes that it is in the best interest of the Property that certain covenants encumber and run with the land, which covenants are intended to be binding upon all persons from time to time acquiring any right, title or interest in the Property or occupying any improvements on the Property. Declarant desires to declare certain conditions, covenants and restrictions upon and subject to which all of the Property hereafter shall be held, improved, conveyed and used. These restrictions burden only the Property and shall not be deemed or construed to burden any other lands of Declarant.

1.02 Withdrawal. Declarant, from time to time, may withdraw any portion of Kualono (the “**Withdrawn Property**”) from the operation of this Declaration with the concurrence of the fee simple owner of such property. Withdrawal shall be accomplished by the recording in the Bureau of a document executed by Declarant and the concurring landowner that contains a legal description of the Withdrawn Property and specifically effects such withdrawal. Upon such filing, the Withdrawn Property shall be withdrawn from and no longer subject to this Declaration or entitled to the benefits hereof and the term “Kualono” shall exclude the Withdrawn Property.

**2. ESTABLISHMENT OF RESTRICTIONS.** Declarant hereby declares that the Property is now held, and subject to annexations and withdrawals as provided in this Declaration, hereafter at all times shall be held, improved, conveyed and used upon and subject to the conditions, covenants and restrictions herein set forth, which are for and shall inure to the benefit of Kualono, its owners and occupants from time to time; provided, however, that the right to enforce this Declaration shall be limited as set forth herein.

**3. PURPOSES OF DECLARATION; PERSONS BOUND.** The purposes of this Declaration are to provide for development and use of the property within Kualono; to prevent the construction on the Property of Improvements (defined below) of inferior or objectionable design, location or materials; to encourage the construction of attractive Improvements at appropriate locations; to provide for the maintenance of Common Areas (defined below); to provide a common development plan for Kualono; and to foster a tranquil and harmonious residential community. This Declaration shall be liberally construed towards those ends. This Declaration shall be binding upon every Owner, Occupant, all agents, and any and all others having or claiming any estate, right, title or interest in or to the Property, including but not limited to Mortgagees, lienholders, tenants, subtenants, licensees and permittees.

**4. DEFINITIONS.** The following terms shall have the following meanings:

4.01 “**Affected Lot**” shall mean the Lot within which a Subdivision Easement is located.

4.02 “**Applicable Law**” shall mean any and all federal, state or local statutes, laws, ordinances, regulations, orders and directives, judicial orders and decisions, administrative requirements and governmental environmental and health standards (including, without limitation, access for disabled persons under the Americans With Disabilities Act, as amended) now or hereafter applicable to Kualono, to any Improvements thereon, to the development, use, possession, occupancy and enjoyment of Kualono and to operations in Kualono.

4.03 “**Association**” shall mean the Kualono Homeowners’ Association, a Hawaii non-profit corporation, as more particularly described in Article 7 below.

4.04 “**Benefited Lot**” shall mean the Lot or other specified lot that is benefited by a Subdivision Easement or to which a Subdivision Easement is appurtenant, as set forth herein.

4.05 “**Benefited Party**” shall mean any person, entity or other party, including without limitation, the Association, Owners, Occupants, Governmental Entities, or utility companies, in whose favor, or for whose benefit, a particular Subdivision Easement is stated to run in this Declaration.

4.06 “**Board**” shall mean the Board of Directors of the Association.

4.07 “**Bureau**” means the Bureau of Conveyances of the State of Hawaii.

4.08 “**Common Area**” means any real property, including, without limitation, interests in real property such as easements and licenses for utilities, drainage, landscaping or otherwise, whether within the Property or outside of the Property, held by the Association and any areas, structures and facilities, whether in existence or proposed that are designated as Common Area by Declarant or transferred to or acquired by the Association. Without limiting the generality of the foregoing, Common Areas may include areas, structures and facilities designated for access, communications, drainage, landscaping, traffic and pedestrian safety, utility supply. The Common Area includes, without limitation, Lots 50-57 of the Plan.

4.09 “**Curator**” means an individual selected by the Curator Selection Committee pursuant to Section 16 of this Declaration.

4.10 “**Curator Selection Committee**” means the committee more particularly described in Section 16 of this Declaration.

4.11 “**Declarant**” means Hanohano LLC and its successors, assigns or designees who may be identified as such in an instrument executed by Declarant (or a successor or assign of Declarant), to be recorded in the Bureau.

4.12 “**Declaration**” means this Declaration of Covenants, Conditions, Easements and Restrictions, as it may be amended from time to time.

4.13 “**Design and Construction Standards**” shall mean the standards set forth in Exhibit B, as they may be amended from time to time.

4.14 “**Design Review Committee**” shall mean the committee more particularly described in Section 6.03.

4.15 “**Design Rules**” shall have the meaning set forth in Section 6.04.

4.16 “**Drainage**” shall mean the swales, drains, ditches, gulches, channels, culverts and bridges.

4.17 “**Easement Area**” shall mean the area comprising each respective Subdivision Easement.

4.18 “**Excavation**” means any disturbance of the surface of the land (except to the extent reasonably necessary for planting and irrigation of vegetation), including any trenching which results in the removal of earth, rock, or other substances from a depth of more than twelve inches below the natural surface of the land or any grading of the surface.

4.19 “**Fill**” means any addition of earth, rock or other materials to the surface of land, which increases the existing elevation of such surface.

4.20 “**Governmental Entity**” shall mean the County of Maui, State of Hawaii, United States of America and/or any agency, department, subdivision or instrumentality thereof.

4.21 “**Hazardous Materials**” shall mean any and all flammable explosives, radioactive materials, asbestos, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, including, without limitation, any substances defined as or included in the definition of “hazardous substance,” “hazardous wastes,” “hazardous materials,” or “toxic substances”.

4.22 “**Hazardous Materials Laws**” shall mean any federal, state or local laws, ordinances or regulations, now or hereafter in effect, relating to environmental conditions, industrial hygiene or Hazardous Materials on, under or about the Owner’s Lot and improvements thereon, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 6901, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., the Clean Air Act, 42 U.S.C. Section 7401, et seq., the Toxic Substances Control Act, 15 U.S.C. sections 2601 through 2629, the Safe Drinking Water Act, 42 U.S.C. Sections 300f through 300j, and any state and local laws and ordinances and the regulations now or hereafter adopted, published and or promulgated with respect to Hazardous Materials.

4.23 “**Heiau/Retention Basin Lot**” shall mean Lot 50 shown on the Plan.

4.24 “**Height**” shall mean the vertical distance measured from a point on the top of a structure to a corresponding point directly below on the natural or finish grade, whichever is

lower. Height for buildings with basements shall be measured from the lowest exterior natural or finished grade. Height for buildings with underground parking areas shall be measured from the lowest exterior natural or finished grade, excluding the area used for vehicle access.

4.25 **“Improvement”** shall mean any changes, alterations or additions to a Lot, including Excavation, Fill, dwelling units, buildings, roads, driveways, parking areas, walls, retaining walls, fences, stairs, patios, courtyards, landscaping, poles, signs, construction or other trailers, and temporary or permanent structures of any type or kind.

4.26 **“LUC Conditions”** means the conditions and restrictions applicable to Kualono pursuant to that certain Certificate of Conditions dated May 20, 2005 and recorded in the Bureau as Document No. 2005-105309.

4.27 **“Lot”** means each of Lots 1 to 49 inclusive as shown on the Plan, or any new lots resulting from the consolidation or subdivision of any of them. Except when clearly contrary to the context, Lot shall include all Improvements thereon.

4.28 **“Mortgagee”** shall mean the holder of a mortgage lien or liens recorded at the Bureau, or any successor thereto, against any Lot and the Subdivision Easements created herein.

4.29 **“Kualono”** shall mean the Property, including without limitation all Lots and all roads and other Common Areas (whether now or in the future designated as such).

4.30 **“Occupant”** shall mean all invitees, guests, renters or other occupants of an Owner and/or a Lot.

4.31 **“Owner”** of a Lot means any person (including Declarant) who owns a fee simple interest in such Lot, and any person to whom all rights as Owner (including voting) shall have been transferred by means of (a) a deed, (b) a lease of such Lot for a period in excess of 5 years, or (c) an agreement of sale which transfers all rights of possession and occupancy; provided, however, that in each such case the transferee of said rights will not be recognized as an “Owner” by the Association unless a written notice of transfer is filed in the official ownership records of the Association.

4.32 **“Plan”** means the subdivision plat for the Kualono Subdivision filed in the Bureau of Conveyances of the State of Hawaii as File Plan No. 2488.

4.33 **“Property”** shall mean Lots 1 to 57, inclusive, as shown on the Plan, and any portion of the Property or any lot.

4.34 **“Subdivision Easement”** shall have the meaning ascribed to in Article 9 below.

4.35 **“Utility”** includes electricity, telephone, cable television, gas, water and any other existing or future use normally considered a utility.

**5. REGULATION OF OPERATIONS AND USES.**

5.01 Permitted Uses. Kualono is zoned R-3 and is subject to the LUC Conditions. Lots may be used for all uses permitted under Maui County Code Chapter 19.08 except the following: schools, buildings used by government entities, bed and breakfast establishments, and short-term vacation rentals. Owners shall comply with all applicable conditions and restrictions set forth in the LUC Conditions. An Owner may at the Owner's expense apply for waivers or modifications of the LUC Conditions or variances from Maui County Code Chapter 19.08, but so long as Declarant owns any Lot in Kualono, any such application shall require Declarant's prior written approval.

5.02 One Dwelling Per Lot. As set forth in the LUC Conditions, Kualono is limited to a maximum of forty-nine (49) dwellings. Accordingly, except as set forth in Section 5.03 below, only one dwelling may be constructed, placed or maintained on each Lot. If two Lots are consolidated into a single Lot, two dwellings may be constructed on the consolidated Lot if permitted by applicable Law. No dwellings may be constructed on the Common Areas.

5.03 Accessory Dwellings. "Accessory Dwellings" as defined in Maui County Code Chapter 19.35 are not permitted due to the limit on dwellings in the LUC Condition. However a Lot Owner may construct an Accessory Dwelling if the Owner first secures (a) a waiver or modification of the LUC Condition that allows an accessory dwelling without impairing the ability of all other Owners to build at least one dwelling per Lot, (b) the approval of the Design Review Committee, and (c) the approval of Declarant, so long as it owns any Lots.

5.04 Animal Control. Domestic animals are permitted including generally recognized house pets; provided, however, all animals will be confined to the borders of their Owner's Lot at all times when out of doors and shall be controlled so as not to disturb any occupant of Kualono. A maximum of six laying hens per Lot are permitted and must be contained in back yard. Roosters are strictly prohibited anywhere in Kualono.

5.05 Vehicles and Parking. All vehicles located on any Lot must be currently registered and licensed to the extent possible under Applicable Law. Vehicles that become inoperable and outside of an enclosed garage must be removed from the Lot or promptly placed within an enclosed garage within two weeks of becoming inoperable. Heavy trucks and heavy equipment (that is anything weighing over 5,000 pounds) shall not be parked on any Lot except on a temporary basis in connection with construction or site work being conducted on such Lot. Boats, trailers, and other recreational vehicles shall only be parked within an Owner's Lot. Vehicles shall not be parked overnight on roadway lots and no parking is allowed at all in other Common Areas. Guest vehicle parking is permitted so long as guest vehicles are not parked overnight.

5.06 Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done on any Lot which may be or may become an annoyance or nuisance to any occupants of Kualono, including but not limited to activities which cause unreasonable noise, dust, or odors or unreasonably violate privacy or violate any Applicable Laws. Examples of prohibited activities under this Section 5.06 include, but are not limited to, allowing dogs to bark excessively, firing guns, or operating cars, trucks, motorcycles or motor bikes that produce abnormally loud noise.

5.07 Maintenance of Structures, Properties and Drainage Reserves. All Improvements located on each Lot shall be kept in attractive condition, in good order and repair, and free from visible deterioration. Whether vacant or improved with a dwelling, each Lot shall be irrigated and kept green with healthy vegetation consistent with sound and prudent soil maintenance practices. Except for Drainage maintained by the Association pursuant to Section 9.02, the Owner of each Lot shall maintain any Drainage on the Lot free and clear of debris, vegetation or improvements that would impair its function. Placement of soil, green waste, debris or other obstructions in Drainage is prohibited. Green waste must be properly disposed of and may not be dumped in Common Areas or Drainage Areas.

5.08 Refuse and Building Materials. Trash, garbage and domestic waste shall not be kept on any Lot except in containers, stored inside the dwelling, enclosed garage, or properly screened and not visible from any street or other Lot. No new or used building materials shall be stored on any Lot except during active construction and all construction waste shall be removed promptly after construction is complete. No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste.

5.09 Grading and Drainage. Without the prior written approval of the Design Review Committee, no Owner of any Lot will construct, maintain, permit or allow any fence or any other Improvement, or otherwise alter the grade or topography of any Lot, in a manner that may increase, retard or obstruct the flow or change the location or direction of the flow of any natural or existing drainage of surface or sub-surface waters onto the Lot from any adjoining Lot, or from the Lot to any adjoining Lot. Grading and improvements on Lots 32 through 49 shall be designed to channel surface water runoff into the underground drainage line serving those Lots. Each other Lot shall be graded and improved so as to contain surface water runoff within the boundaries of the Lot or to direct it into the roadway adjoining the Lot.

5.10 Signs. Signs are prohibited within Kualono except (a) Declarant's signs in connection with the construction, promotion and sale of Kualono, (b) not more than one standard broker's-type "For Sale" sign on a Lot in connection with resale of such Lot, and (c) subdivision and road identification signs installed by Declarant or the Association as approved by Declarant (including any signs installed pursuant to Declarant's reserved right set forth in Section 9.03).

5.11 Landscape Maintenance. Owners shall regularly maintain all lawns and other landscaping within their Lots. Grass shall not be allowed to grow in excess of four inches in height, and all trees, plants and shrubs shall be kept neatly pruned and maintained. Dead and diseased plants shall be promptly removed. All green waste shall be either composted in fenced location on the Lot not visible from neighboring Lots, or properly disposed of offsite at County or private green waste facilities. Initially the Association shall maintain the grass and other landscaping located within the roadway lots between the roadway and the boundary of each Lot (generally an area approximately five (5) feet wide). However, if the Board elects to stop maintaining such grass and landscaping, each Owner shall be responsible for maintaining the portion of that common landscaping between the Owner's Lot and the road.

5.12 Individual Wastewater Treatment Systems. The Lots are not served by a municipal wastewater system. Cesspools are prohibited. Accordingly, the Owner of each Lot shall be responsible for installing, operating, maintaining, repairing and replacing an individual



wastewater system (also known as a septic system) within the Lot in accordance with all Applicable Laws. Individual Wastewater Systems must be maintained in good operating condition, shall be pumped regularly (not less than once every 5 years), shall not be allowed to overflow or discharge odors detectible on neighboring Lots.

5.13 Temporary Structures. No temporary buildings or structures, sheds, tents or trailers of any kind shall be erected or permitted to remain on any Lot except during periods of active construction and only to the extent incidental to such construction and approved in advance in accordance with the Design and Construction Standards.

5.14 Further Divisions of Properties. No Lot shall be further subdivided and Lots may not be submitted to condominium property regimes. Two or more adjacent Lots may be consolidated.

5.15 Rezoning. The Lot may not be rezoned without the prior approval of the Board and, so long as it owns any Lots, the Declarant.

5.16 Timeshares. Use of dwelling as a time-share, fractional ownership or similar arrangement by which use and occupancy of the dwelling rotates among different owners is prohibited.

5.17 Community Gate. An entry gate may be installed within Lot 55 shown on the Plan (the main access road in Kualono), at Declarant's option or at the option of the Association. If installed by the Association, the decision to install and maintain (or cease the use of and remove) such gate shall be approved by the affirmative vote or written consent of the majority of the Owners of Lots. Said gate, if so installed, shall be maintained and operated by the Association as a common expense.

5.18 Exterior Lighting. All exterior lights shall be appropriately screened so as not to cause any unreasonable glare visible from adjoining Lots or roads, and shall otherwise comply with all Applicable Laws.

5.19 No Direct Access to Old Haleakala Highway. No direct access is permitted to Old Haleakala Highway from any Lot directly abutting Old Haleakala Highway, including without limitation Lots 11, 12, 13, 14, 15, 16, 19 and 20 in Kualono, and the Owners of any such Lot shall neither construct, nor permit the construction of, any driveway, entrance or other means of access to Old Haleakala Highway from their respective Lots. Lots 11, 12, 13, 14, 15, 16, 19 and 20 shall have access to Old Haleakala Highway via Access Easements granted herein over Lots 51 through 55, inclusive.

5.20 Building and Landscaping Height Restrictions.

(a) Lot 31. Any building, structure, or landscaping located within Easement V-1 (as more particularly described in Exhibit D attached hereto and made a part hereof) on Lot 31 shall not exceed a Height of four (4) feet.

(b) Lot 33. Any building, structure, or landscaping located on Lot 33 shall not exceed a Height of twenty (20) feet.



5.21 Road-Widening Lots. Lots 58 and 59 shown on the File Plan are intended to be dedicated by the Declarant to the County of Maui for use as portions of old Haleakala Highway. If the County of Maui does not accept road widening Lots 58 and 59, Declarant will convey Lots 58 and 59 to Association, which conveyance the Association shall be accept without conditions. In such event, the Association shall be responsible for the maintenance and repair of Lots 58 and 59.

## 6. DESIGN AND CONSTRUCTION STANDARDS.

6.01 Purpose. The purpose of the architectural and construction standards set forth in this Article 6 is not to regulate all details of an Owner's construction and landscaping activity, but to give the Association the means to attempt in its discretion to develop and perpetuate an attractive residential community that will harmonize and conform to the existing environment. The power to exercise these controls is reserved to the Declarant and the Association and may be exercised and delegated at their option only.

6.02 Restriction and Scope. All Improvements shall be made, constructed or installed in accordance with the Design and Construction Standards set forth in Exhibit B. No Improvement may be constructed without the prior written approval of the Design Review Committee; and no such Improvement once built, may be externally remodeled, or otherwise visually altered to any material extent without the prior written approval of the Design Review Committee as further set forth in the Design and Construction Standards. The Owners of every Lot shall comply with and abide by all proposals, plans and specifications submitted to and approved by the Design Review Committee with respect to such Lot.

Notwithstanding the foregoing, the following shall not require prior written approval of the Design Review Committee under this Article 6: (a) the construction, remodeling or change of any Improvement by Declarant as part of the development or initial sale of Kualono; or (b) the construction, remodeling or change of any Improvement by the Association of any Common Area facilities; or (c) the repair or reconstruction of a damaged structure in accordance with plans previously approved for the original structure or the repainting of a structure in accordance with a previously approved color and color scheme.

6.03 Composition of Design Review Committee. Declarant, or any person or persons whom Declarant in its sole discretion may designate from time to time, shall serve as the Design Review Committee until the date, on which the Declarant shall, notify the Association that Declarant assigns the Design Review Committee's function to the Association. Declarant shall give such notice no later than the date on which its Class B membership ends as set forth in Section 7.03. Thereafter, the Design Review Committee shall consist of the Board of Directors of the Association or the Board's designees.

6.04 Standards and Procedures of the Design Review Committee. All proceedings by the Design Review Committee shall be in accordance with this Declaration. Prior to construction of any Improvements an Owner shall provide the Design Review Committee with one half-size hard copy and one electronic copy of its constructions plans as filed or to be filed with the County of Maui building permit application, together with such supplemental documentation or information as the Committee may request. The Design Review Committee

shall review and approve or disapprove the plans within thirty (30) days of the Owner's complete submission. If the Design Review Committee fails to respond to an Owner's request to approve or disapprove plans within such thirty (30) day period, the plans shall be deemed approved. Any approval or disapproval shall be in writing and any disapproval shall detail the reasons for disapproval. All Improvements shall be constructed in strict compliance with the plans approved by the Design Review Committee, any conditions on such approvals, and this Declaration and the Design and Construction Standards. Construction of all Improvements must be completed with eighteen (18) months of the date on which the Owner starts construction. The Design Review Committee may in its discretion adopt or amend reasonable rules and regulations to govern its procedures and requirements as it may deem appropriate from time to time including requirements that applicants cover all expenses reasonably incurred by the Committee in performing its duties ("**Design Rules**").

6.05 Liability. The members of the Design Review Committee shall not be personally liable, and the Design Review Committee itself and Declarant shall not be liable, for any of their or its acts or omissions in connection with the performance of (or failure to perform) any duties hereunder absent fraud or intentional misconduct.

Neither Declarant, the Association, its Board of Directors, nor the Design Review Committee (nor the agents, officers, members or affiliates of any of them) shall be held liable for any injury, loss or damages arising out of or in any way connected with the integrity, quality or execution of any construction or design, or the failure of any construction or design to comply with any Applicable Laws, or the failure to approve or to require the approval of any Improvement.

6.06 Non-Waiver. The approval by the Design Review Committee of any plans, drawings or specifications for any work done or proposed, or in connection with any other matter requiring approval of the Design Review Committee under the Declaration shall not be deemed to constitute a waiver of any right to withhold approval as to any similar plan, drawing, specification or matter.

6.07 No Protection of Views. No Lot shall have any vested rights or easements for the protection of any view from such Lot and Declarant makes no warranties or representations of any kind to the buyer, Owner or occupant of any Lot concerning the extent, attractiveness or protection of any view over any Lot or Common Area from any other Lot or Common Area. The Design Review Committee shall have no obligation to consider the protection of views in any case before it (including both original applications or variance applications) unless a formal written view easement shall have been specifically granted by the Owner(s) of any Lot in favor of the applicant before the Design Review Committee and said easement shall have been recorded in the Bureau and a true copy delivered to the Design Review Committee with the application. However, the Design Review Committee shall have the unilateral right, in its sole discretion, to consider views in approving proposed Improvements, including structures, topographical changes, landscaping and trees.

6.08 Enforcement. The Design Review Committee shall have the right to inspect work on any Lot for compliance and to issue written notice of violations. Violation of the Construction Rules in Section 10 of the Design and Construction Guidelines must be corrected as

soon as possible and in any event within twenty-four (24) hours. All other violations must be corrected as soon as practicable, and in any event within thirty (30) days from the notice of violation. If an Owner fails to correct a violation by the specified deadline, the Design Review Committee may:

- (a) assess the Owner an assessment of \$100.00 for each day that the violation continues thereafter (which amount shall be adjusted every five (5) years to reflect inflation). This assessment shall be a lien on the Lot as provided in Section 8.
- (b) require removal of the non-compliant Improvements, regardless of the availability or adequacy of any other remedy.
- (c) pursue any and all remedies.

6.09 Relationship between the Design and Construction Standards and Applicable Law. Declarant makes no representation, express or implied, that the requirements set forth in this Declaration or the Design and Construction Standards will be consistent with the minimum requirements of Applicable Law. It is the sole responsibility of anyone undertaking Improvements in the Kualono to assure compliance with all provisions of Applicable Law.

6.10 Variances. The Design and Construction Standards shall apply to all Lots except where variances were expressly granted by the Design Review Committee. In the event specific designs, plans, or specifications cannot or do not comply with these Design and Construction Standards, the Owner may apply in writing to the Design Review Committee for a variance. Each application will be considered on a case-by-case basis on its architectural merit and contribution to or conflict with the overall purpose of the Design and Construction Standards. The Design Review Committee may, upon finding good cause and no other practical alternative being available, grant and approve a variance in writing from the Design and Construction Standards. A variance granted in any one case shall not be considered as precedent or grounds requiring approval of subsequent similar requests in any other cases.

6.11 Amendments. No amendment to the Design and Construction Standards or the rest of this Article 6 shall apply to any Improvement that shall have been previously approved by the Design Review Committee and the construction or placement of which (in accordance with said approval) commenced prior to the amendment or is commenced by the Owner within eighteen (18) months of the date of the amendment.

## 7. ASSOCIATION.

7.01 Organization. The Association is charged with the duties and empowered with the rights set forth in this Declaration, the Association's articles and bylaws, and in Hawaii Revised Statutes Chapters 414D and 421J.

7.02 Membership. The Owners of each Lot shall automatically be members of the Association, each of whom shall remain a member of the Association until such time as such member is no longer an Owner.

7.03 Voting. Initially, the Association shall have two classes of voting membership:

(a) Class A. Class A members shall be all the Owners other than the Declarant. Each Class A member shall have one (1) vote for each Lot owned by such member. If more than one person or entity owns a Lot, any one of said persons or entities may exercise the vote allocated to the Lot on behalf of all the Owners of the Lot unless the Association is notified in writing that the Owners of the Lot disagree as to how the vote should be cast, in which event the vote for the Lot shall be not counted unless the Owners of such Lot unanimously agree.

(b) Class B. The sole Class B member shall be the Declarant. The Class B member shall be entitled to five (5) votes for each Lot it owns. The Class B membership shall cease to exist when the Declarant has sold and conveyed forty of the Lots, or when the Declarant notifies the Association's Board that it is voluntarily relinquishing its Class B membership. Thereafter, Class A membership shall be the only class of membership, and Declarant shall be deemed a Class A member as to any Lots it still owns. Within sixty (60) days of the date Declarant becomes a Class A member the Association shall hold an annual or special meeting at which Directors shall be elected for all seats on the Board.

If two or more Lots are consolidated, the voting interests of the consolidated lot shall equal the total voting interest of the individual Lots prior to their consolidation. Common Area Lots have no votes.

7.04 Association Duties & Powers. The Association shall accept, hold, control, manage, maintain and operate, as a common expense, all Common Areas, from and after the time when ownership or use thereof shall have been transferred to the Association (or the Association acquires rights with respect thereto), and may exercise all reasonable management rights, powers and authority with respect thereto including, but not limited to, (a) the power to engage a managing agent and enter into other contracts for, or otherwise to implement, the maintenance, operation, repair, replacement and sale of such Common Area; (b) the power to maintain appropriate casualty and liability insurance; and (c) the power to adopt, implement and enforce reasonable rules and regulations to govern the orderly use and operation Common Areas. All such dominion, control and authority shall cease with respect to any road, water line or sewer line, or other facility, the responsibility of which shall be accepted by the County of Maui or other Governmental Entity or any regulated public utility. **THE COUNTY OF MAUI HAS NOT AGREED TO ACCEPT ANY SUCH ROADS, LINES OR FACILITIES, AND DECLARANT DOES NOT WARRANT OR REPRESENT THAT ANY SUCH ACCEPTANCE WILL OCCUR IN THE FUTURE.**

7.05 Documents of the Association. The Association shall maintain its documents and records and make them available to Owner in accordance with the Hawaii Planned Community Associations Act, Chapter 421J, Hawaii Revised Statutes.

## 8. FUNDS AND ASSESSMENTS.

8.01 Operating Fund; Reserves. The Association shall create and maintain an operating fund into which shall be deposited all monies received by the Association whether from maintenance assessments, special assessments, dues, user fees, fines, income attributable to the fund itself or any other rents, charges or fees levied by the Association. The fund shall comprise the working capital of the Association out of which the Association shall make all disbursements and discharge all liabilities in the performance of its duties and obligations and the exercise of its rights and powers under this Declaration and its Bylaws. The Association shall also establish and fund one or more reserve accounts for reserves against expected expenses of maintaining, repairing and replacing the Improvements in the Common Areas.

8.02 Common Expenses. Each Lot shall pay all assessments for common expenses assessed to such Lot by the Association in accordance with this Declaration. At least sixty (60) days prior to the commencement of each calendar year, the Board shall prepare an estimate of the costs and expenses to be incurred by the Association during such calendar year in performing its functions, duties and obligations and in paying all fees and expenses of the Design Review Committee. Except in the first year after Declarant's completion of the roads serving the Lots, the Board shall also estimate the amount of reserves necessary for contingencies and replacements; plus any additional reserves as may be required to comply with any requirements of any Governmental Entity. From said estimate, the Board shall subtract an amount equal to the anticipated balance (exclusive of any accrued reserves for contingencies and replacements) of the operating fund at the start of the upcoming calendar year that is attributable to maintenance assessments from the preceding calendar year; the difference shall constitute the basis for determining maintenance assessments for the upcoming calendar year. All Lots existing at the time the Board determines the amount of assessments for common expenses shall be subject to equal per Lot assessments that shall be paid in twelve (12) monthly installments, or as determined by the Board. If any two (2) or more Lots are consolidated, the assessments for common expenses attributable to the resulting Lot shall be equal to the amount that would have been assessed against the Lots that were consolidated.

If at any time during any calendar year, the maintenance assessment proves inadequate for any reason, including but not limited to the inability to collect any Owner's share thereof, the Board may levy a further assessment in the amount of such actual or estimated inadequacy which shall be assessed to the Owner in the manner set forth above. At the time of such additional levy, the Board will provide to the Owners a reasonably detailed summary of the reasons for the increased assessments.

The obligation to pay assessments shall commence as to each Lot on the first day of the month following: the month in which the Board first determines a budget and levies assessments pursuant to this Article. The first annual assessment levied on each Lot shall be adjusted according to the number of months remaining in the calendar year at the time assessments commence on the Lot. Assessments shall be paid in monthly installments to the Association on such dates as prescribed by the Board. The Board may require advance payment of assessments at closing of conveyance of the title to a Lot and impose special requirements for Owners with a history of delinquent payment.



Notwithstanding anything to the contrary contained herein, until Declarant's Class B membership terminates, the following provisions shall apply with respect to all assessments under this Section 8: (a) At Declarant's option, Declarant shall be excused from payment of its share of assessments related to its Lots, and in such event, Declarant shall be responsible to pay any operating expenses and reserves that exceed the assessments receivable from other Owners and other income of the Association. In the event such option is exercised by Declarant, Declarant may, at any time, elect to terminate such option, in which event Declarant's Lots shall be assessed in the manner otherwise set forth herein; and (b) In addition, at Declarant's option, in the event that the Association does not have sufficient cash available to meet its expenses, the Board is authorized to borrow money from Declarant which may, in its sole discretion, loan money to the Association for such purposes. Any such loan evidenced by a promissory note executed by the Association, bearing a reasonable interest rate, and other terms as mutually agreed by Declarant and Association.

8.03 Financial Records. The Association shall keep detailed financial records. All financial and other records shall be made reasonably available for examination by any Owner and their authorized agents, with the exception of confidential records such as employee files, nonpublic litigation files and privileged communications. At least annually, the Association shall prepare, or cause to be prepared, a financial statement of the Association in accordance with generally accepted accounting principles.

8.04 Exemption from Assessments. Anything herein to the contrary notwithstanding, the Association shall be exempt from the assessments provided for in this Article 8 (with respect to any Lots the Association owns), and the property owned by it shall be excluded from the total area of the Kualono when calculating the Owners' pro rata shares of expenses.

8.05 Fines; Default in Payment of Assessments of Fees. Each assessment of expenses by the Association or the Board shall be a separate, distinct and personal debt of the Owners of each Lot (or in the case of multiple Owners of a Lot, each Owner jointly and severally) against which the same is assessed. If the Owner shall fail to pay the Owner's assessment when due, then said Owner shall pay an additional assessment of \$50.00 (or such other fine or fines adopted by the Board from time to time) for each such failure and all delinquent assessments shall bear interest at the rate of one and one-half percent (1½%) per month from the assessment due date (or the highest rate permitted by Hawaii law, if such highest rate is less than one and one-half percent (1½%) per month).

The Association may enforce and collect each such assessment (together with all legal fees and expenses of enforcement) by legal proceedings to enforce such obligation. All amounts so owed shall be a lien on the Lot obligated. Such lien may be enforced by judicial foreclosure or power of sale in the same manner as a mortgage is enforced under Hawaii law, as amended from time to time. The Association may file a notice of such lien in the Bureau, but said filing shall not be a prerequisite to the perfection of such lien. In addition to, and without limiting said lien and foreclosure, the Association may obtain an ex parte attachment or lis pendens against the delinquent Property or its owners. Such lien or attachment, however, shall be junior and subordinate in lien priority to the lien of any mortgage or other encumbrance which shall have

been in existence and duly recorded in the Bureau prior to the date the Association’s notice of lien, attachment or pending litigation is recorded.

8.06 Special Assessments. The Board shall levy a special assessment against the Owner for its acts or failure or refusal to act or otherwise to comply with this Declaration, Design Rules, Design and Construction Standards or Applicable Law that causes the Association to incur any expense that otherwise would not have been incurred by the Association in the performance of its duties and obligations. Such assessments shall be in the amount of the extraordinary expense incurred and shall be due and payable to the Association when levied. Such extraordinary expenses shall be deemed to include, without limitation, engineers’, architects’, attorneys’, accountants’ and consultants’ fees when reasonably incurred by the Association.

9. **EASEMENTS**. In order to enhance Kualono and to facilitate the usefulness and enjoyment of Kualono by the Owners and Occupants of the Lots, Declarant declares and reserves various easements for various purposes, including, without limitation, access, utilities, drainage, civil defense siren, and other purposes (each such easement, including without limitation, Access Easements, Utility Easements, Drainage Easements, Landscaping Easements, and the Civil Defense Easement as those terms are defined in this Declaration, are individually called a “Subdivision Easement” and collectively called the collectively, “**Subdivision Easements**”), in favor of the Association and/or various Lots, other specified lots and Benefited Parties.

9.01 Declaration of Access Easements. Declarant hereby declares and grants a perpetual, non-exclusive easement for the following purposes only, over, upon, across and through the following easements (“**Access Easements**”) affecting the following Affected Lots, in favor of and appurtenant to the following Benefited Lots, to the extent expressly provided herein, upon and subject to the terms and conditions set forth in this Declaration:

Area	Affected Lot (Access Easement covers entire Lot)	Benefited Lots	Purpose(s)
77,887 sq. ft.	51	1-50	Pedestrian and vehicular ingress and egress.
39,162 sq. ft.	52	1-50	Pedestrian and vehicular ingress and egress.
12,465 sq. ft.	53	1-50	Pedestrian and vehicular ingress and egress.
19,530 sq. ft.	54	1-50	Pedestrian and vehicular ingress and egress.
11,424 sq. ft.	55	1-50	Pedestrian and vehicular ingress and egress.
3,810 sq. ft.	56	1-50	Pedestrian and emergency egress.
1,871 sq. ft.	57	1-50	Pedestrian and emergency egress.

(a) Specific Terms and Conditions Applicable to All Access Easements.

i. Use of the Access Easements shall be subject to reasonable speed limits, parking limits, and other rules and regulations as Declarant or the Association (through its Board of Directors) may establish from time to time.

ii. From and after the date on which each Access Easement or related Common Area is available for use by the Owners and Occupants of the Benefited Lots (regardless of whether or not it shall have been conveyed to the Association) or such later date as Declarant may determine in its sole discretion, the Association will assume all responsibilities and liabilities with respect to its use, operation, maintenance and improvement. All costs and expenses will be assessed to and paid by all Lot Owners as common expenses as provided in Section 8.02.

iii. Lots 56 and 57 are for use for pedestrian traffic only or evacuating Kualono in case of fire, natural disaster or similar emergencies, and for access by emergency responder vehicles.

9.02 Declaration of Drainage Easements. Declarant hereby declares and grants the Association perpetual easements for the following purposes only, over, upon, across, under and through the following easements (collectively, “**Drainage Easements**”) affecting the following Affected Lots, to the extent expressly provided herein, together with a perpetual, nonexclusive easement to enter, cross over and upon the Affected Lot to the Drainage Easement area for the purposes of obtaining access to the Drainage Easement and transporting to and from the Drainage Easement area such vehicles, personnel, materials and equipment as are reasonably necessary for the purposes of the rights granted in this Section 9.02, upon and subject to the terms and conditions set forth in this Declaration:

Easement	Area	Affected Lot(s)	Purpose(s)
D-1 as shown on the Plan	2,046 sq. ft.	12	Drainage Line
D-2 as shown on the Plan	1,388 sq. ft.	29	Drainage Line
Easement D-3 as described on <u>Exhibit C</u> attached hereto	11,791 sq. ft.	32, 36, 37, 39, 40, 41, 44, 45, 49	Drainage Line
Easement D-4 as described on <u>Exhibit C</u> attached hereto	44,988 sq. ft.	3-10	Drainage Basin and waterline purposes
Easement D-5 as described on <u>Exhibit C</u> attached hereto	1,178 sq. ft.	4	Drainage Line
Easement D-6 as described on <u>Exhibit C</u> attached hereto	1,043 sq. ft.	3	Drainage Line
L-4 as shown on the Plan	35,536 sq. ft.	20-31	Drainage Channel

Easement D-4 affecting Lots 3-10 is an exclusive easement for the Drainage Basin located therein, subject to any other easements granted over Easement D-4 in this Declaration or pursuant to Declarant’s reserved rights, that is maintained by the Association. All other



Drainage Easements listed in this table are non-exclusive easements, meaning that Lot Owners may use those areas so long as such use does not interfere with or impair the function of the drainage.

In addition to the Drainage Easements set forth in the table above, the Heiau/Drainage Basin Lot contains a retention and drainage basin.

(a) Specific Terms and Conditions of Use of Drainage Easements. The Drainage Easements described in this Section 9.03 are subject to and upon the following terms and conditions:

i. The Drainage Easements are easements “in gross” in favor of the Association, and are not appurtenant to any particular lands owned by the Association.

ii. The Association shall be responsible for maintaining the Drainage basins and improvements located in Easements D-1, D-2, D-3, D-4, D-5, and D-6.

iii. No dirt, green waste or other debris shall be deposited in Drainage Easements, and no fences, walls or other landscaping or Improvements of any kind that would impair their function are permitted.

iv. Each owner of a Lot in which a portion of Drainage Easement L-4 is located shall keep the drainage channel therein free and clear of vegetation, dirt, debris, and fences, walls or other improvements that would impair the flow of water through that easement.

v. Owners and occupants of the Lots may not enter or use the drainage basin within Easement D-4, and no improvements, including Individual Wastewater System leach fields, may be installed in Easement D-4. Fences shall be maintained by the Association along the boundary of the drainage basin located in Easement D-4 affecting Lots 3 to 10. However, Owners and occupants may seek approval of the Board (or Design Review Committee) to replace such fencing around such drainage basin so long as the replaced fencing does not impair the flow of water through Easement D-4.

vi. The Association shall check the drainage basin in Easement E-4 and any other drainage basins and channels in the Subdivision for sediment buildup, not less frequently than annually and shall remove sediment buildup if and to the extent it shall impair the efficient operation of the Drainage Easements or drainage basins and channels. The Association shall keep reasonable records of its maintenance actions. If the owner of a property on which a Drainage Easement is located shall dump or place clippings, debris or other material in any Drainage Easement the effect of which would be to impair the Drainage Easement’s efficient operation, the Association may remove all such materials and clean the Drainage Easement and shall have the authority to levy a special assessment for the cost thereof against the property owner to reimburse the Association for the cost thereof. Neither the Association nor any officer, director or employee of the Association shall be liable for any claim, loss, damage or expense which the owner or occupant of any Property may suffer or incur as a result of any storm water runoff, drainage or failure of any Drainage Easement or any drainage basin in the Subdivision to adequately manage drainage regardless of whether said claim, loss, damage or expense shall have-been caused by any acts or omissions of the Association or any officer,

director, agent or contractor of the Association or the failure of the Association to manage, maintain or operate the Drainage Easements or any drainage basin in accordance with this section.

vii. Without limiting the Association’s said authority, the Owner of each Affected Lot containing a Drainage Easement, except Lots affected by Easement D-4 (Lots 3-10) shall have the right to plant and maintain landscaping of the land within the Drainage Easement and to use said land for the Owner’s own uses, provided that the operation and function of the applicable Drainage Easement to manage drainage shall not be impaired or diminished.

viii. If the Association is unable or fails to carry out its maintenance responsibility to preserve and manage the condition of the Drainage Easement on any Lot as needed to effectively manage and control drainage, then the Owner(s) of such Lot shall assume the responsibility of maintaining that portion of the Drainage Easements located within the boundaries of said Lot, including repair of any storm-related erosion that may pose a threat to the safety or stability of buildings and other permitted structures erected along the Drainage Easement. Said Owner(s) shall be entitled to receive reimbursement from the Association of all costs incurred in performing said work, as a common expense of the Association.

ix. In all events dumping of clippings, vegetative waste and fill in the Drainage Facilities and in any drainage basin by any Owner is strictly prohibited.

9.03 Declaration of Landscaping Easements. Declarant hereby declares and grants the Association a perpetual, non-exclusive easement to plant and maintain landscaping, irrigation and signage over, upon, across, under and through the following easements (collectively, “**Landscaping Easements**”) affecting the following Affected Lots to the extent expressly provided herein, together with a right of ingress to and egress from the Landscaping Easement over the Affected Lot, upon and subject to the terms and conditions set forth in this Declaration:

<b>Easement</b>	<b>Area</b>	<b>Affected Lot(s)</b>	<b>Purpose(s)</b>
L-1 as shown on the Plan	7,775 sq. ft.	11-14, inclusive, and 56	Landscaping
L-2 as shown on the Plan	10,181 sq. ft.	15, 16, 19, 20, and 57	Landscaping
L-3 as shown on the Plan	1,692 sq. ft.	47 and 48	Landscaping
L-4 as shown on the Plan	35,536 sq. ft.	20-31, inclusive	Landscaping

(a) Specific Terms and Conditions of Use of Landscaping Easements. The Landscaping Easements described in this Section 9.03 are subject to and upon the following terms and conditions:

i. The Landscaping Easements are easements “in gross” in favor of the Association, and are not appurtenant to any particular lands owned by the Association.

ii. Declarant will install landscaping and a vinyl fence with rock columns along Old Haleakala Highway within Easements L-1 and L-2 (the “**Initial Landscaping Improvements**”).

iii. The Association shall have the right to install, maintain, use, repair, replace and remove landscaping, irrigation lines, signs, lighting and other related equipment and improvements (the “**Association Landscaping Improvements**”).

iv. The Association shall be responsible for maintaining the Initial Landscaping Improvements and the Association Landscaping Improvements as a common expense; provided, however, the Board may elect to stop maintaining any or all of the Initial Landscaping Improvements and the Association Landscaping Improvements, or both, in which event each Lot Owner shall be responsible for the maintenance of such Initial Landscaping Improvements and/or the Association Landscaping Improvements, as applicable, located on such Owner’s Lot and such Lot Owners may make changes to such landscaping and/or fence with Design Review Committee approval.

9.04 Reservation of Civil Defense Easement. Declarant reserves to itself and the Association the right to grant a perpetual and exclusive easement or license over, upon, across and through a portion of Lot 20 in favor of the State of Hawaii, Department of Defense (DOD) (the “**Civil Defense Easement**”) for the installation, maintenance, and use of a civil defense siren, pole and related utilities and equipment for so long as the State of Hawaii, Department of Defense (“**DOD**”) requires. The document granting the Civil Defense Easement shall contain a map or metes and bounds description of such easement, which shall be as small as reasonably possible to satisfy DOD requirements for civil defense siren sites. Declarant further reserves the right to amend this Declaration without the consent or joinder of any other party to attach a map and/or metes and bounds description of the Civil Defense Easement.

9.05 Reservation of Signage Easements. Declarant reserves to itself and the Association an easement over the Common Area to place monument signs with the name Kualono or other name or information designated by Declarant, including the right to install, light, repair and replace the signs and landscape such easement areas.

9.06 General Easement Terms and Conditions Applicable to All Subdivision Easements.

(a) Responsibility. Each Benefited Party and Owner of a Benefited Lot shall and shall cause all of its respective Occupants or its guests, tenants and licensees, to: (a) use due care and diligence in the use of the Subdivision Easements; (b) observe and perform all Applicable Laws now or hereafter imposed by any Governmental Entity, which are applicable to the Benefited Party’s or the Benefited Lot Owner’s or Occupant’s use of the Affected Lot and the Easement Area; (c) not at any time make or suffer any strip or waste or unlawful, improper or offensive use of the Affected Lots; (d) not exercise the easement rights granted herein in such a manner that unreasonably interferes with the use of the Affected Lots by the Owners and Occupants thereof; (e) not permit the Affected Lot to be used for any purposes other than those expressly permitted above; and (f) complete the construction and installation of any improvements made by such Benefited Party or Owners of the Benefited Lot within the Affected

Lot promptly, with due care and diligence, in compliance with all Applicable Laws and free and clear of all liens.

(b) Condition of Easement Area. Declarant makes no warranty or other representation as to the condition of the Easement Areas or its adequacy for the intended use by the Benefited Parties or the Owners and Occupants of the Benefited Lots.

(c) No Structures Within Subdivision Easements. No buildings or other structures shall be built by an Owner within the Subdivision Easements, including without limitation, any areas labeled on the Plan as easements for landscaping, setbacks, water, drainage, electricity, telephone, or other utilities.

(d) Indemnification. The Owners and Occupants of the Benefited Lots and all Benefited Parties shall at all times indemnify and hold harmless Declarant and Owners of the Affected Lots from and against all:

i. Loss or damage to the property of such Owner, Occupant, such Benefited Party or of others occurring in the Easement Area or arising out of or as a result of the use of the Easement Area by the Owner or Occupant of a Benefited Lot or the Benefited Party; and

ii. Liability for injury or death of any person or persons arising out of or as a result of the use of the Easement Area by the Owner or Occupant of a Benefited Lot or a Benefited Party, or by the failure of such Owner, Occupant or Benefited Party to comply with their respective obligations with respect to the Easement Area hereunder;

provided, however, that such indemnified party shall not have acted or failed to act fraudulently or in bad faith or as a result of gross negligence.

(e) Condemnation. In case at any time or times during the term of this Declaration, the Affected Lot over which the Easement Areas are then located, or any part thereof, shall be taken or condemned by any authority having the power of eminent domain, any and all damages awarded or payable for or on account of any land or water or improvements thereon shall be payable to and be the sole property of the Owner of such Affected Lot so condemned or taken. The Benefited Parties and Owners and Occupants of a Benefited Lot shall not by reason thereof be entitled to any claim against Declarant for compensation; provided, however, that a Benefited Party, Owner and Occupant of a Benefited Lot may claim and recover from the condemning authority full compensation for any severance or other damages to its rights granted herein. In every such case the estate and interest of the Benefited Party and Owners and Occupants of a Benefited Lot in the premises so taken or condemned shall cease and be determined upon the taking of possession thereof by the condemning authority.

(f) Encroachments. Upon the completion of the installation of any utility line, water line, sewer line, drainage structure, or other facility which is part of the Common Areas, if it is determined that the location of the line, structure or facility inadvertently encroaches on any Property outside of the Easement Area as shown on the Plan or other applicable easement map, a nonexclusive, perpetual easement shall thereafter exist for the maintenance, operation, repair and replacement of such line, structure, or facility in its location

as built, provided that its location outside of the Easement Area shall not unreasonably interfere with the reasonable use and enjoyment of the encumbered Property by the Owners and Occupants thereof or cause any diminution in value of the encumbered Property.

9.07 Additional Easements. Declarant hereby reserves the right to grant and create further easements within the roads and Common Areas of Kualono and in any easement area within a lot that is shown on the Plan or described in this Declaration, and to relocate existing easements as shown on the Plan or other applicable easement map, for the purpose of reflecting the locations of utility lines, water lines, sewer lines, drainage facilities or improvements, landscaping, pumps, controls, access points, meters, poles, anchors, stays and wires or any other equipment necessary or appurtenant thereto as-built; provided, however, that no such additional or relocated easement within any Lot shall unreasonably interfere with the reasonable use and enjoyment of said Property by the owners and occupants thereof or cause any diminution in value thereof.

10. **RESERVATION OF WATER RIGHTS.** Except to the extent conveyed to the Association or any utility company, Declarant reserves all surface and subsurface water and water rights with respect to Kualono, including without limitation any and all rights to water originating or flowing upon the Kualono, and to basal, subterranean and artesian water. Drilling wells is prohibited without the prior written consent of the Declarant.

11. **RESERVATION OF EASEMENTS IN FRONT YARD SETBACKS.** Declarant reserves to itself and the Association all easements and rights of way which either Declarant or the Association in their sole discretion may at any time or times require for roads, streets, signage, walks, driveways, parkways, underground lines, pipes and conduits and appurtenances for public or private sewers, water, electrical, gas, communications, cable, television, other utilities, drainage, landscaping, planting, screening and any other services or purposes whatsoever on, in, under, over or across the portions of the Kualono lying between the street boundary of the Lots and the County of Maui front yard setback lines thereof and also the right (but not the obligation) from time to time to plant and replace on the setback area such trees and shrubs as either the Association or the Declarant in their sole discretion may deem suitable for landscaping, provided that said reserved rights shall be exercised in such manner as to cause the least practicable interference with the use of such Lots or Improvements thereon. The exercise of such reserved rights shall be accomplished in such manner as to cause as little interference with the Owners use of their Lots as reasonably possible. With the Association or the Declarant's prior written approval, easement installations may be expanded or relocated if the expansion or relocation of the easement will not have a material, adverse impact on the use of a Lot provided, however, that the party performing the expansion or relocation shall pay all costs and expenses of such expansion or relocation, including reasonable attorneys' and consultant's fees of the Declarant, the Association and the affected Owner.

12. **RESERVATION OF TRADEMARK AND TRADENAME RIGHTS.** Declarant reserves all rights to the name "Kualono" and any variation thereof.

13. **CONSTRUCTION ACTIVITIES.** Declarant is or will be undertaking various construction activities within Kualono. Other buyers of Lots within the Kualono will be undertaking construction activities as they develop their lots. Governmental Entities and utility



companies also may be undertaking construction activities. In connection with such construction activities:

13.01 Declarant reserves and is hereby granted the right and an easement to enter upon the Property both before and after closing for the purpose of constructing the onsite and offsite improvements which directly or indirectly benefit the Property, or which are required to be constructed by governmental requirements, and to create noise, dust and other nuisances in connection with such construction activities. Upon request, Owner agrees promptly and for no additional consideration to execute and deliver future instruments confirming Declarant's right and easement.

13.02 Each Owner acknowledges that construction activities by Declarant and others in the vicinity of the Property will or may result in noise, dust, vibration and other nuisances, disturbances or hazards to Owner and to persons and property on or within the Property, and may temporarily impede Owner's access to Kualono and the Property.

13.03 Each Owner acknowledges that Declarant makes no representations or warranties concerning plans, or the absence of plans, by Declarant or others for future development of adjacent or nearby properties, and any plans for the future development of adjacent and nearby properties by Declarant are subject to change in the sole and absolute discretion of the Declarant or its successors and assigns.

14. **UTILITY AND OTHER EFFECTS.** Each Owner acknowledges that the Property is subject to or may be located adjacent to or in the vicinity of electric, water and other utilities (including, without limitation high-powered electrical transmission lines) and public roads and thoroughfares, and irrigation ditches and hydroelectric facilities which may result in, among other things, electromagnetic fields, nuisances, noise, dust, disturbances or hazards to persons and to property on or with the Property, and each Owner agrees to assume all risks of impairment of Owner's use and enjoyment of the Property, loss in market value and property damage and personal injury arising from such utilities, public roads and thoroughfares, irrigation ditches and hydroelectric facilities.

15. **WIND CONDITIONS.** Each Owner acknowledges that the Property is or may be exposed to blustery or windy conditions that impact the development and use of the Property, and each Owner agrees to assume all risks of impairment of Owner's use and enjoyment of the Property, loss in market value and property damage and personal injury arising from such wind conditions.

16. **HEIAU/RETENTION BASIN LOT.**

16.01 General. The Heiau/Retention Basin Lot, located on the west side of the Subdivision, is a common area that contains a heiau, a site of historical importance to Hawaiians, marked as the "Existing Heiau" on the Plan. The Heiau/Retention Basin Lot will be conveyed to the Association by the Declarant. Each Owner acknowledges that, subject to this Declaration and applicable governmental restrictions, members of the public including practitioners of customary and traditional Hawaiian practices in the area, may have access to the heiau through

Kualono, which may result in additional noise, and vehicular and pedestrian traffic in and around Kualono.

16.02 Buffer Zones. The Heiau/Retention Lot contains two (2) concentric buffer zones surrounding the heiau, as more particularly shown on the Plan: (a) the “**60-Foot Buffer Zone**” extends out from the perimeter of the heiau by sixty (60) feet (in the general location shown on the Plan), and (b) the “100-Foot Buffer Zone” extends out from the perimeter of the heiau by one hundred (100) feet, in the general location shown on the Plan. No public access is permitted within the 60-Foot Buffer Zone. The installation or construction of any structures or other improvements within the 100-Foot Boundary Zone is strictly prohibited (except for any boundary wall around the 60-Foot Buffer Zone and irrigation lines that may be installed between the 60-Foot Buffer Zone and the 100-Foot Buffer Zone perimeters). Neither zone may be disturbed or moved. The Association shall protect, maintain, monitor, and preserve these zones as a common expense of the Association, which obligations include the installation and maintenance of appropriate informational signage required to be installed to aid in the preservation of the buffer zones and the heiau.

16.03 Curator Selection Committee. The Declarant will cause the formation of a Curator Selection Committee, which committee is charged with the duties and empowered with the rights set forth in its Bylaws. The Curator Selection Committee shall be comprised of three (3) persons: (i) a representative of the Association, (ii) a representative from the Office of Hawaiian Affairs, and (iii) a representative from the Kupuna Council of Maui. These representatives shall be selected pursuant to the Curator Selection Committee’s Bylaws.

16.04 Curator. The Curator Selection Committee shall select a Curator to oversee the maintenance and preservation of the heiau by the Association, and direct and coordinate the installation and maintenance of native plantings within the 60-Foot Buffer Zone, as set forth in the Curator Selection Committee’s Bylaws. The Association shall also bear the reasonable out-of-pocket costs, if any, incurred by the Curator, in connection with the performance of the Curator’s duties.

17. **ARCHAEOLOGICAL**. Each Owner agrees to assume all risks of impairment of Owner’s use and enjoyment of a Lot, loss in market value and property damage and personal injury arising from the existence of and/or access to an archaeological site. Should any evidence of burial, archaeological or historic sites such as artifacts, bones, stone platforms, pavings or walls be found, Owner shall stop work in the immediate vicinity and the State Department of Land and Natural Resources, Historic Preservation Division (“**SHPD**”) shall be promptly notified. Subsequent work shall proceed after the SHPD authorization has been received and applicable mitigation measures have been implemented.

18. **NEARBY AGRICULTURAL ACTIVITIES**.

18.01 Each Owner acknowledges that Kualono is adjacent to, nearby or in the vicinity of lands being, or which in the future may be, actively used for livestock grazing and the growing, harvesting and processing of sugar cane, pineapple and other agricultural products (such growing, harvesting and processing activities being herein collectively called the “**Agricultural Activities**”), which activities may from time to time bring result in odor, smoke,

dust, noise, heat, agricultural chemicals, particulates and similar substances and nuisances being brought upon or affecting Kualono (collectively, the “**Agricultural By-Products**”).

18.02 Each Owner hereby assumes complete risk of and forever releases Declarant from all claims for damages (including, but not limited to, consequential, special, exemplary and punitive damages) and nuisances occurring on the premises and arising out of any Agricultural Activities or Agricultural By-Products. Without limiting the generality of the foregoing, each Owner, hereby, with full knowledge of its rights, forever: (i) Waives any right to require Declarant, and releases Declarant from any obligation, to take any action to correct, modify, alter, eliminate or abate any Agricultural Activities or Agricultural By-Products, and (ii) Waives any right to file any suit or claim against Declarant for injunction or abatement of nuisances.

18.03 Each Owner shall indemnify, defend and hold harmless Declarant from and against all claims, demands, actions, losses, damages, liabilities, costs and expenses, including, without limitation, attorneys’ fees, asserted against or incurred by Declarant, which arise out of any injury, death or damage to person, property or business that occurs on the Property and is the result of any Agricultural Activities or Agricultural By-Products, irrespective of the theory of liability asserted against Declarant; provided, however, this indemnification shall not apply to claims, demands, actions, losses, damages, liabilities, costs and expenses caused by the proven (and not merely alleged) willful misconduct of Declarant, but unless Declarant’s willful misconduct shall be established by a final, non-appealable judgment of a court of competent jurisdiction, Declarant shall be entitled to the full benefits of this indemnification, including the right to reimbursement for all costs and expenses, including attorneys’ fees, incurred in the defense of any claims or demands asserted by any party against Declarant.

18.04 Each Owner agrees that any Agricultural Activities or Agricultural By-Products, and any claim, demand, action, loss, damage, liability, cost or expense arising therefrom, shall not constitute a breach of any covenant or warranty by Declarant or be the basis for a suit or other claim for injunction or abatement of nuisances, and each such Owner, hereby forever waives any right to file any such suit or claim.

19. **NUISANCES AND OTHER DISCLOSURES.** Kualono may be subject to various nuisances, including those set forth below. Each Owner assumes all risks relating to the nuisances, releases Declarant and its affiliates from all claims of damages relating to the nuisances, waives any right to require Declarant to take any action regarding the nuisances and to indemnify Declarant for any claims arising out of injury or damage occurring on a Lot and as a result of a nuisance.

19.01 Wildlife. The area in the vicinity of Kualono has a population of deer that could bark and make obnoxious noises during the course of the day, including during the early hours of the morning and late at night. Such deer may also eat vegetation within Kualono. Coqui frogs, which can create loud noises, have been spotted on Maui and may at some point be found in and around Kualono. Each Owner will be assuming all risks pertaining to wildlife in and around Kualono.



19.02 High School. King Kekaulike High School is approximately 1/10 mile from Kualono. As a result activities at the High School, there will be additional noise, vehicular traffic, and bright lights (from the High School stadium and otherwise) in and around Kualono.

19.03 Civil Defense Siren. A civil defense siren is planned to be installed in the vicinity of Lot 20 shown on the Plan, but the location has not yet been determined. Owners should expect additional deafening noise in Kualono when the siren is installed and used for monthly testing and during emergencies.

## 20. ADMINISTRATIVE PROVISIONS.

20.01 Right to Abate Violations. If any person or entity shall violate or attempt to violate any of the covenants herein contained, any rules or regulations of the Association or any ruling of the Design Review Committee, the Owner of any Lot, the Association or Declarant in its discretion, but in any case without having any affirmative duty to do so may commence legal action at law or in equity against such person or entity, either to prevent or abate such violation or to recover damages caused by such violation, or both. In addition to, and without limiting, the foregoing, the Association, through its Board, may impose reasonable monetary fines for violations of this Declaration, the Bylaws, or Association rules in accordance with procedures set out in the Bylaws.

### 20.02 Dispute Resolution.

(a) Agreement to Be Bound By Dispute Resolution Procedures. Each Owner, by acquiring any interest in a Lot, agrees that certain disputes shall be resolved in accordance with this Article.

(b) Association Proceedings. The Association, acting through the Board, shall have the power and the duty to reasonably defend the Association (and, in connection therewith, to raise counterclaims) in any pending or potential lawsuit, arbitration, mediation or governmental proceeding, and the Association, acting through the Board, shall have the power, but not the duty, to reasonably institute, prosecute, maintain and/or intervene in any lawsuit or administrative proceeding (collectively hereinafter referred to as a "**Proceeding**") in its own name, but only on matters affecting or pertaining to Kualono and as to which the Association is a proper party in interest. Each and any exercise of such power(s) shall be subject to full compliance with the compliance with this Article.

(c) Association Approval to Commence Proceedings; Exception for Operational Proceedings. Except with respect to an Operational Proceeding, and subject to the provisions below relating to "Development Controversies" (as defined below), no Proceeding shall be commenced or prosecuted by the Board or the Association unless approved at a meeting of the Association called for such purpose, by the affirmative vote of not less than sixty-seven percent (67%) of the Owners. For purposes of this Section, an "Operational Proceeding" means any Proceeding brought by the Association: (i) to enforce the provisions of the Declaration, Bylaws or Association Rules (including, without limitation, the foreclosure of liens), or (ii) for the imposition and/or collection of assessments from Unit Owners; or (iii) involving appeals of or challenges to real property or ad valorem taxation, or (iv) to protect against any matter which

imminently and substantially threatens the health, safety and welfare of all of the Owners, or (v) against a supplier, vendor, contractor or provider of services, pursuant to a contract or purchase order with the Association and in the ordinary course of the Association's business, or (vi) by way of counterclaim in a Proceeding instituted against the Association, or (vii) for money damages where the total amount in controversy for all matters arising in connection with the action is not likely to exceed Twenty Five Thousand Dollars (\$25,000.00) (which amount shall be automatically adjusted every five years after the date of this Declaration to reflect the percentage change in the Cost of Living Factor over that 5-year period). Subject to the provisions of this Article relating to Development Controversies, the Board from time to time may cause an Operational Proceeding to be commenced and prosecuted without first securing the affirmative vote of not less than sixty-seven percent (67%) of the Owners.

(d) Development Controversies. Any Proceeding involving one or more Owners, the Association and/or the Board against the Declarant or its agents or contractors, or any officer, director, member, partner or shareholder of Declarant or its agents or contractors (collectively and severally referred to in this Section as "**Development Parties**") arising from or otherwise relating to the Declaration, Bylaws, issues involving the design, construction or development of Kualono, the adequacy of reserves, or any other matter, of whatever nature, involving Kualono (excepting, however an Operational Proceeding brought against Declarant solely in its capacity as a Lot Owner) shall be referred to herein as a "**Development Controversy**". Strict compliance with the following provisions of this Section shall be mandatory with regard to any and all Development Controversies:

(i) Negotiation. The parties to any Development Controversy shall first participate in a period of good faith negotiation (the "**Negotiation**") to resolve the Development Controversy. The claimant shall give written notice to the Development Parties describing the nature of all claims against them (the "**Dispute**") and a description of what the claimant believes ought to be done to resolve the Dispute. The claimant shall also propose a date and time for a conference, which date must fall on a business day between fifteen and twenty days after the date the claimant sends the foregoing notice to the Development Parties (the "**Conference**"), unless mutually extended by the parties. The Conference shall be held at a mutually agreed upon location. Within five business days of the Conference notice, Declarant shall provide a follow-up notice to the claimant confirming the time of the Conference and stating the name and title of the Development Parties' representative(s) to the Conference. Prior to the Conference, the claimant will, in good faith, discuss with the Declarant's representative and consider possible resolutions of the Dispute. At the Conference, the claimant and Development Parties' representative(s) shall confer together to resolve the Dispute for a maximum period of two hours, although the parties may extend or adjourn the meeting by mutual agreement. If, as a result of the Conference, the Dispute or certain issues in the Dispute have been resolved, the parties shall jointly state in writing the issues that have been resolved and the issues, if any, that remain unresolved and will require Mediation (as defined below).

(ii) Mediation. In the event that the parties have completed the Negotiation as required by the preceding paragraphs but have failed to resolve the entire Dispute, then, if either of the parties wishes to pursue the Dispute further, the unresolved aspects of the Dispute shall be resolved, if possible, by mediation conducted with the assistance of a single mediator in accordance with the Arbitration Rules, Procedures, and Protocols of Dispute

Prevention and Resolution, Inc. (“DPRI”) then in effect (the "**Mediation**"). Any Mediation shall be conducted on the Island of Maui, and shall be governed by the laws of the State of Hawaii. The parties shall share equally the expense of the mediator.

(iii) Dispute Resolution. Any Development Controversy and any other dispute by or between the Declarant and the Association, the Board and/or any Owner or Owners arising out of or incident to the development or management of the Kualono or any other aspect of the relationship between Declarant and the Association, the Board, and/or Owners regarding Kualono shall be resolved in accordance with this Section. Except for Disputes already mediated under Section 20.02(d), any such disputes shall first be submitted to mediation through DPRI, or such other dispute resolution agency as the parties may mutually select, in the County of Maui, Hawaii, in accordance with DPRI’s Mediation Rules, Procedures and Protocol then in effect. If necessary, claims not resolved by mediation shall be decided by arbitration through DPRI, or such other dispute resolution agency as the parties may mutually select, which, unless the parties mutually agree otherwise, shall be in accordance with DPRI’s Arbitration Rules, Procedures & Protocol then in effect. Any person that desires to submit any issue or dispute to arbitration shall promptly so notify the other party in writing. The demand for arbitration shall be filed in writing with the other party to the dispute and with DPRI or another mutually-acceptable dispute resolution organization. The arbitration shall be heard and determined by three arbitrators selected in accordance with DPRI’s Arbitration Rules, Procedures & Protocols unless the parties agree on a single arbitrator. All proper costs and expenses of such arbitration including, without limitation, witness fees, attorney’s fees and the fees of the arbitrators shall be charged to the party or parties in such amounts as the arbitrator or arbitrators shall determine at the time of the award. This agreement to arbitration shall be governed by and interpreted under the Federal Arbitration Act (9 U.S.C. §1, ET SEQ.) (“FAA”) to the exclusion of any inconsistent Hawaii state law, including the Hawaii Arbitration Act, Chapter 658A, Hawaii Revised Statutes. The FAA and not the Hawaii Arbitration Act shall apply to and be used to interpret DPRI’s Mediation Rules, Procedures & Protocols and DPRI’s Arbitration Rules, Procedures & Protocols. THE MEDIATION AND ARBITRATION AWARD SO RENDERED SHALL BE BINDING IN ALL ASPECTS AND SHALL BE GOVERNED BY AND INTERPRETED UNDER THE FAA, AS IT MAY BE HEREAFTER AMENDED TO THE EXCLUSION OF ANY INCONSISTENT STATE LAW, REGULATION OR JUDICIAL DECISION. THE AWARD OF THE ARBITRATOR SHALL BE FINAL AND BINDING AND MAY BE ENTERED AS A JUDGEMENT IN ANY COURT OF COMPETENT JURISDICTION. The parties further agree that any documents of assignment, lease or conveyance of a Lot shall contain a provision substantially in the form set forth above, requiring the assignee, lessee or grantee to arbitrate any and all disputes concerning the Lot, provided that failure to include such a provision shall not relieve the assignee, lessee or grantee of the obligation to mediate and arbitrate hereunder. Further, Declarant, the Association, and each Owner shall indemnify, defend and hold harmless the other from and against any and all damage occurring as a result of the resolution of any such dispute other than by arbitration due to the actions of such person. Any arbitration proceedings under this section will be submitted to arbitration in the County of Maui, Hawaii, unless the parties otherwise agree.

(iv) Funding of Proceedings. In no event shall any Association reserve fund or working capital fund be used as the source of funds to institute, prosecute, maintain and/or intervene in any Proceeding (including, but not limited to, any Development Controversy)

other than an Operational Proceeding unless such use has been approved by a majority of Lot Owners. Association reserve funds and working capital funds are to be used only for the purposes specified therein or therefor, and for no other purpose whatsoever.

(v) Amendments of this Section. Any amendment of this Section shall require the written consent and joinder of Declarant, together with such other applicable approval requirements set forth in Section 20.04.

(vi) Severability. All provisions of this Section 20.02 are severable. If any provision of this Article is determined to be invalid or unenforceable such invalidity or unenforceability shall not affect the remaining provision of this Article.

20.03 Duration of Covenants. These covenants shall be binding for a period of ninety-nine (99) years from the date this instrument is recorded in the Bureau. Thereafter, they shall automatically be extended without any documentation or any action of any person or the Association, for successive periods of ten (10) years each unless terminated at the end of said initial 99-year period or at the end of any such successive 10-year period by the affirmative vote or written election of Owners representing not less than 65% of all Lots, evidenced by an instrument recorded in the Bureau that (a) is signed by two officers of the Association, (b) contains a certification that it was approved by the Owners of not less than 65% of all Lots.

20.04 Amendment of Covenants. These covenants may be amended or terminated at any time by the affirmative vote or the written consent of the Owners of not less than 65% of all of the Lots that are subject to this Declaration at a meeting of the Association duly held, the notice of which shall have stated as a purpose the consideration of the amendment or repeal of the Declaration, giving the substance of the proposed amendment or indicating the provisions to be repealed, as the case may be. Any amendment to this Declaration shall be effective as of the date the amendment is recorded in the Bureau that (a) is signed by two officers of the Association, and (b) contains a certification that it was approved by the Owners of not less than 65% of all Lots. Notwithstanding the foregoing, this Declaration may not be amended in any event, or at any time, without Declarant's written consent as long as Declarant owns any Lots, unless Declarant is dissolved, declared bankrupt, or in its sole discretion elects to relinquish such approval by right of written notice signed by Declarant and duly recorded in the Bureau.

Notwithstanding the foregoing, the Declarant may from time to time amend these covenants unilaterally without the consent of any Owner or Mortgagee of any Property during the ten (10) year period from the date of this Declaration, for any of the following purposes:

- (a) To correct any drafting or typographical error;
  - (b) To comply with (i) any Applicable Law, (ii) any requirement or condition of any Governmental Entity, or (iii) any governmental approval, permit or order affecting the subdivision;
  - (c) To qualify some or all of the Lots for financing through the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, or any similar program to facilitate the financing of Properties through any mortgage market or general financing program;
- or

(d) To annex to this Declaration additional property or Common Areas that may be developed in the future in lands abutting or near Kualono.

The Declarant's rights reserved under this Section 20.03 may be released by Declarant in its discretion at any time upon Declarant's voluntary relinquishment of said rights by written release recorded in the Bureau.

20.05 Notice of Sale or Transfer of Title. Each Owner shall promptly file a copy of its ownership document with the Board, which shall maintain a record of ownership of all Lots. If an Owner shall mortgage its Lot or any interest therein, or lease its Lot for a period in excess of five (5) years, the Owner shall notify the Board in writing of the name and address of the mortgagee or occupant and also of any release of such mortgage or lease; the Owner shall notify the Board whether voting rights have been assigned to the mortgagee or occupant with respect to the Owner's interest in the Association; and the Board shall maintain all such information in the record of ownership.

20.06 Records of Ownership and Notices. The Declarant, the Association and the Design Review Committee shall be entitled to rely conclusively on the records of ownership of the Properties provided to the Association pursuant to Section 20.05 and 4.31 above, for all purposes, including, without limitation, names and addresses for all communications, notices, service of process, approvals, voting and consents, it being the obligation and burden of each Owner of each Property to ensure that the Declarant and the Association have ownership records which are accurate and up-to-date. The Declarant, the Association and the Design Review Committee may also conclusively rely, in the sole discretion of each, on the records of ownership and addresses of Owners of each Property as shown on the real property tax records of Maui County in any particular case.

20.07 Severability. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability or any other provision hereof.

20.08 Interpretation; No Waiver. The provisions hereof shall be construed and enforced under the laws of the State of Hawaii and be liberally construed to effectuate their purpose of creating a uniform plan for the development and operation of Kualono. Failure to enforce any provision hereof shall not constitute a waiver of the right to thereafter enforce said provision or to enforce any other provision hereof. No acceptance of any assessment paid by any Owner shall be deemed to be a waiver of any breach by such Owner of any provision of this Declaration or a waiver of any rights of Declarant or any other person under this Declaration, or be construed as any agreement or representation by Declarant that such Owner is in compliance with the provisions of this Declaration. No remedy herein reserved is intended to be exclusive of any other remedy, but each remedy shall be cumulative and in addition to any remedy given hereunder or now or hereafter existing at law or in equity.

20.09 Attorneys' Fees. In any action for the enforcement of the provisions of this Declaration or for damages or any other form of relief, the prevailing party in such action shall be entitled to recover from the losing party all of the prevailing party's costs, expenses and reasonable attorneys' fees.

20.10 Perpetuities. If any provision of this Declaration shall be void or voidable for violation of the Rule Against Perpetuities in effect in the State of Hawaii, said provision shall continue only until the end of such period as shall not violate the Rule Against Perpetuities, measured by the lives of the following persons on the date of this Declaration: The members of the United States Senate serving in office on the date of this Declaration, and the descendants of such persons living on the date of this Declaration.

*[Remainder of page intentionally left blank; Signatures on following page]*



Executed the day and year first above written.

**HANOHANO LLC**, a Hawaii limited liability company

By: Separate Maui Investment, LLC,  
a Washington limited liability company  
Its Manager

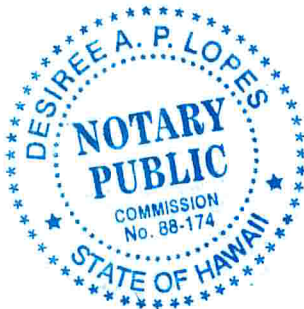
By: JSG Separate Management, Inc.,  
a Washington corporation  
Its Manager

By:   
Name: Ryan Churchill  
Its: Vice President

“Declarant”

STATE OF HAWAII )  
 ) SS:  
COUNTY OF MAUI )

On this 27<sup>th</sup> day of July, 2016, before me personally appeared **Ryan Churchill**, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



*Desiree A. P. Lopes*  
Notary Public, State of Hawaii

Printed Name: DESIREE A. P. LOPES

My commission expires: My commission expires 3/30/2020

(Official Stamp or Seal)

<u>NOTARY CERTIFICATION STATEMENT</u>	
Document Identification or Description: Kualono Declaration of Covenants, Conditions, Easements, and Restrictions	
Doc. Date: <u>7.27.16</u> or <input type="checkbox"/> Undated at time of notarization.	
No. of Pages: <u>51</u> Jurisdiction: Second Circuit	
(in which notarial act is performed)	
<u><i>Desiree A. P. Lopes</i></u> Signature of Notary	<u>7.27.16</u> Date of Notarization and Certification Statement
<u>Desiree AP Lopes</u> Printed Name of Notary	 (Official Stamp or Seal)



**Exhibit A**  
**Property Description**

All of those certain parcels of land situate at Keahua, Kula, Island and County of Maui, State of Hawaii, being the Lots 1 through 57, inclusive, as shown below, of the "KUALONO SUBDIVISION", as shown on File Plan Number 2488, filed in the Bureau of Conveyances of the State of Hawaii, and containing the respective areas as shown below.

Lot No.	TMK No.	Area
1	(2) 2-3-11-2	18,193 sq. ft.
2	(2) 2-3-11-76	18,102 sq. ft.
3	(2) 2-3-11-77	18,107 sq. ft.
4	(2) 2-3-11-78	18,209 sq. ft.
5	(2) 2-3-11-79	18,187 sq. ft.
6	(2) 2-3-11-80	18,114 sq. ft.
7	(2) 2-3-11-81	18,142 sq. ft.
8	(2) 2-3-11-82	18,184 sq. ft.
9	(2) 2-3-11-83	19,901 sq. ft.
10	(2) 2-3-11-84	19,902 sq. ft.
11	(2) 2-3-11-85	22,301 sq. ft.
12	(2) 2-3-11-86	19,680 sq. ft.
13	(2) 2-3-11-87	21,178 sq. ft.
14	(2) 2-3-11-88	18,279 sq. ft.
15	(2) 2-3-11-89	18,345 sq. ft.
16	(2) 2-3-11-90	19,712 sq. ft.
17	(2) 2-3-11-91	18,465 sq. ft.
18	(2) 2-3-11-92	18,869 sq. ft.
19	(2) 2-3-11-93	20,371 sq. ft.
20	(2) 2-3-11-94	25,221 sq. ft.
21	(2) 2-3-11-95	18,259 sq. ft.
22	(2) 2-3-11-96	19,788 sq. ft.
23	(2) 2-3-11-97	21,930 sq. ft.
24	(2) 2-3-11-98	20,065 sq. ft.
25	(2) 2-3-11-99	20,081 sq. ft.
26	(2) 2-3-11-100	19,770 sq. ft.
27	(2) 2-3-11-101	20,069 sq. ft.
28	(2) 2-3-11-102	20,443 sq. ft.
29	(2) 2-3-11-103	20,590 sq. ft.
30	(2) 2-3-11-104	19,618 sq. ft.

Lot No.	TMK No.	Area
31	(2) 2-3-11-105	35,465 sq. ft.
32	(2) 2-3-11-106	20,034 sq. ft.
33	(2) 2-3-11-107	20,538 sq. ft.
34	(2) 2-3-11-108	20,030 sq. ft.
35	(2) 2-3-11-109	20,470 sq. ft.
36	(2) 2-3-11-110	20,079 sq. ft.
37	(2) 2-3-11-111	19,765 sq. ft.
38	(2) 2-3-11-112	19,471 sq. ft.
39	(2) 2-3-11-113	18,304 sq. ft.
40	(2) 2-3-11-114	19,237 sq. ft.
41	(2) 2-3-11-115	19,620 sq. ft.
42	(2) 2-3-11-116	18,350 sq. ft.
43	(2) 2-3-11-117	18,400 sq. ft.
44	(2) 2-3-11-118	19,940 sq. ft.
45	(2) 2-3-11-119	19,923 sq. ft.
46	(2) 2-3-11-120	18,074 sq. ft.
47	(2) 2-3-11-121	18,349 sq. ft.
48	(2) 2-3-11-122	18,649 sq. ft.
49	(2) 2-3-11-123	18,433 sq. ft.
50	(2) 2-3-11-1	2.383 Acres
51	(2) 2-3-11-124	77,887 sq. ft.
52	(2) 2-3-11-125	39,162 sq. ft.
53	(2) 2-3-11-126	12,465 sq. ft.
54	(2) 2-3-11-127	19,530 sq. ft.
55	(2) 2-3-11-128	11,424 sq. ft.
56	(2) 2-3-11-129	3,810 sq. ft.
57	(2) 2-3-11-130	1,871 sq. ft.

**Exhibit B**  
**Kualono Design and Construction Standards**

**1. House Design**

- a. Minimum interior living area of 1,250 square feet (not counting garage).
- b. No pre-fabricated homes or mobile homes are allowed.
- c. Finish material shall be wood, hardi-plank, Masonite, stucco, plaster, or CMU/hollow block textured with stucco or plaster finish. No plain-surfaced plywood, vinyl siding, metal siding, split-faced CMU block, or decorative CMU block are allowed.
- d. Homes may not be painted in bright colors such as pink, purple or other pastels. Red and green “plantation” colors are allowed.
- e. All utilities and wires must be underground, except for roof-mounted solar photovoltaic panels.
- f. Per Hawaii Department of Health Rules, dwellings served by individual wastewater systems are limited to a certain number of bedrooms (or rooms that might be used and bedrooms). Owners must consult those requirements in determining how many bedrooms to include in a proposed home.

**2. Garage and Driveway**

- a. All homes must have at least a two-car enclosed garage. No carports are allowed.
- b. Prior to the commencement of construction of a Home, the curb and sidewalk shall be removed and replaced with appropriate gravel material to minimize mud and debris from coming onto the roadway during construction. During construction, such graveled area shall be the sole access point to the Property (i.e. no “curb hopping” is permitted).
- c. Driveway and aprons must be concrete and installed prior to the completion of the home. When the driveway apron is cut, Owner shall promptly replace irrigation lines, and install a minimum 4” PVC sleeve housing the irrigation lines under the driveway apron. Only one (1) driveway apron is permitted on each Lot, and the driveway apron shall satisfy all County standards as if connecting directly to a County road.
- d. No driveways are permitted that connect to Old Haleakala Highway.

**3. Roof Design**

- a. All homes and garages must have sloped roof with a minimum roof pitch of 4:12.
- b. Roof material shall be clay, concrete, ceramic tile, wood shingles, wood shakers, asphalt singles, or metal.
- c. No building, improvement or structure located on any Lot shall have a roof consisting of a highly reflective material.

**4. Lot Grading and Drainage**

- a. Grading and improvements on Lots 32, 36, 37, 40, 41, 44, and 45 shall be designed to channel surface water runoff into the underground drainage line serving those lots.
- b. Each other Lot shall be graded and improved so as to contain surface water runoff within the boundaries of the Lot or to direct it into the roadway adjoining the Lot.
- c. Lots shall not be graded, landscaped or improved in a manner that would direct the flow of surface water runoff over neighboring Lots.

**5. Solar and Satellite**

- a. Solar energy systems are limited to roof-top solar heating and photovoltaic panels. No ground-mounted solar heating and photovoltaic panels.
  - b. Satellite dishes must be roof-mounted and no more than three (3) feet in diameter and placed in the rear or side of the house to the extent technically possible.
- 6. Walls and Fences**
- a. All walls and fences are restricted to 6 feet tall measured from exposed wall or fence.
- 7. Landscaping**
- b. All Lots must have landscaping installed within 30 days from completion of house construction.
  - c. Trees shall not be allowed to grow taller than the allowable height of the home under Maui County Code Chapter 19 or these Design and Construction Standards, whichever is lower.
- 8. Screening of Certain Equipment and Improvements**
- a. All exterior refuse receptacles and mechanical equipment, including air conditioning, tanks, and utilities, shall be screened with landscaping, walls or fences.
- 9. Storage, Kennels, Miscellaneous Accessory Structures**
- a. Only one (1) outdoor storage shed is permitted per Lot and shall be in the rear or side of the Lot.
  - b. Maximum height of storage sheds shall be 10 feet measured from foundation and a maximum of 200 square feet.
  - c. Dog (or domestic animal) kennels shall be located in fenced backyards only.
  - d. Clothes lines shall be located in backyards only.
- 10. Construction Rules**
- a. Heavy construction noise is limited to 8:00 am to 5:00 pm, Monday through Saturday.
  - b. Construction site shall be kept orderly with all trash and debris removed at the end of the day.
  - c. All construction materials must be stored on the Lot, and may not be stored in the roadways or Common Areas.
  - d. Construction debris shall be generally located within the lot with the exception of a dumpster.
  - e. Each builder shall be responsible for providing adequate sanitary facilities for construction workers on the Lot.

**Exhibit C**  
**Descriptions of Drainage Easements Not Shown on the Plan**

**See Attached.**

**Kualono Subdivision  
Description of Easement D-3**

A Drainage Easement D-3 in favor of Kualono Homeowner's Association, over and across portions of Lots 32, 36, 37, 39, 40, 41, 44, 45, and 49 of Kualono Subdivision (File Plan 2488), also affecting portions of Royal Patent Grant 1215 to Lono, Land Patent Grant 4006 to Joe de Freitas Phillips, and Deed of Minister of Interior to W.H. Bailey at Keahua, Kula, Maui, Hawaii and being more particularly described as follows:

Beginning at a point at the northeasterly corner of this easement, being also the southeasterly corner of Lot 48 and the northeasterly corner of Lot 49 of Kualono Subdivision (File Plan 2488), the coordinates of said point of beginning referred to Government Survey Triangulation Station "PIIHOLO" being 8,114.58 feet South and 13,023.56 feet West and running by azimuths measured clockwise from True South:

1. Thence along Lot 52 (Lei'ohu Circle) of Kualono Subdivision (File Plan 2488), with the point of curvature azimuth from the radial point being: 252° 35' 43" and the point of tangency azimuth from the radial point being: 254° 40' 13", having a radius of 278.00 feet, the chord azimuth and distance being: 343° 37' 58" 10.07 feet;
2. 67° 00' 145.67 feet along the remainders of Lots 49 and 45 of Kualono Subdivision (File Plan 2488);
3. 98° 40' 29.02 feet along the remainder of Lot 45 of Kualono Subdivision (File Plan 2488);
4. 53° 40' 641.37 feet along the remainders of Lots 45, 44, 41, 40, 37, 36, and 32 of Kualono Subdivision (File Plan 2488);

5. 358° 50' 130.40 feet along the remainder of Lot 32 of Kualono Subdivision (File Plan 2488);
6. Thence along Lot 51 (Lei'ohu Circle) of Kualono Subdivision (File Plan 2488) on a curve to the right, with the point of curvature azimuth from the radial point being: 356° 32' 09" and the point of tangency azimuth from the radial point being: 0° 27' 40", having a radius of 146.00 feet, the chord azimuth and distance being: 88° 29' 54.5" 10.00 feet;
7. 178° 50' 135.65 feet along Lot 33 of Kualono Subdivision (File Plan 2488);
8. 233° 40' 333.24 feet along Lots 34, 35, and 38 of Kualono Subdivision (File Plan 2488);
9. 136° 34' 193.27 feet along Lot 38 of Kualono Subdivision (File Plan 2488);
10. Thence along Lot 51 (Lei'ohu Circle) of Kualono Subdivision (File Plan 2488) on a curve to the right, with the point of curvature azimuth from the radial point being: 140° 38' 44" and the point of tangency azimuth from the radial point being: 144° 37' 12", having a radius of 145.00 feet, the chord azimuth and distance being: 232° 37' 58" 10.06 feet;
11. 316° 34' 193.45 feet along the remainder of Lot 39 of Kualono Subdivision (File Plan 2488);
12. 233° 40' 334.18 feet along Lots 39, 42, 43, and 46 of Kualono Subdivision (File Plan 2488);



13. 330° 54' 22.23 feet along Lot 48 of Kualono  
Subdivision (File Plan 2488);
14. 247° 00' 141.37 feet along same to the point of  
beginning and containing an  
Area of 11,791 Square Feet,  
more or less.



WARREN S. UNEMORI ENGINEERING, INC.

Wells Street Professional Center  
2145 Wells Street, Suite 403  
Wailuku, Maui, Hawaii 96793  
July 15, 2016

By Reed M. Ariyoshi 04/30/18 Exp.  
Licensed Professional Land Surveyor  
Certificate No. 6597

**Kualono Subdivision  
Description of Easement D-4**

A Drainage Easement D-4 in favor of Kualono Homeowner's Association, over and across portions of Lots 3 to 10, inclusive, of Kualono Subdivision (File Plan 2488), also affecting portions of Royal Patent Grant 1215 to Lono, Land Patent Grant 4006 to Joe de Freitas Phillips, and Deed of Minister of Interior to W.H. Bailey at Keahua, Kula, Maui, Hawaii and being more particularly described as follows:

Beginning at a point at the northwesterly corner of this easement, being also the northeasterly corner of Lot 2 and the northwesterly corner of Lot 3 of Kualono Subdivision (File Plan 2488), the coordinates of said point of beginning referred to Government Survey Triangulation Station "PIIHOLO" being 8,193.93 feet South and 13,852.13 feet West and running by azimuths measured clockwise from True South:

1. 220° 10' 577.67 feet along Lots 6-C-2-A and 6-C-1 of Phillips Estate Subdivision and Lot C-2 of Subdivision of Grant 1215 to Lono, being also along the remainders of Deed of Minister of Interior to W.H. Bailey, Land Patent Grant 4006 to Joe de Freitas Phillips, and Royal Patent Grant 1215 to Lono;
2. 318° 40' 20.01 feet along Lot 10 of Kualono Subdivision (File Plan 2488);
3. 254° 07' 44.72 feet along the remainder of Lot 10 of Kualono Subdivision (File Plan 2488);
4. 274° 22' 32.35 feet along same;
5. 280° 26' 51.63 feet along same;
6. 267° 33' 51.10 feet along Lot 10 of Kualono Subdivision (File Plan 2488);

7. Thence along Lot 53 (He'ohualoha Place) of Kualono Subdivision (File Plan 2488) on a curve to the left, with the point of curvature azimuth from the radial point being: 77° 32' 20" and the point of tangency azimuth from the radial point being: 62° 38' 08", having a radius of 48.50 feet, the chord azimuth and distance being: 340° 05' 14" 12.58 feet;
8. 87° 33' 76.24 feet along the remainder of Lot 9 of Kualono Subdivision (File Plan 2488);
9. 66° 06' 39.34 feet along same;
10. 47° 19' 62.06 feet along the remainders of Lots 9 and 8 of Kualono Subdivision (File Plan 2488);
11. 41° 42' 151.67 feet along the remainders of Lots 8, 7, and 6 of Kualono Subdivision (File Plan 2488);
12. 46° 54' 113.67 feet along the remainders of Lots 6 and 5 of Kualono Subdivision (File Plan 2488);
13. 43° 10' 111.13 feet along the remainders of Lot 5 and 4 of Kualono Subdivision (File Plan 2488);
14. 39° 34' 123.12 feet along the remainders of Lots 4 and 3 of Kualono Subdivision (File Plan 2488);
15. 45° 26' 42.97 feet along the remainder of Lot 3 of Kualono Subdivision (File Plan 2488);

16. 135° 26'

57.69 feet along Lot 2 of Kualono  
Subdivision (File Plan 2488) to  
the point of beginning and  
containing an Area of 44,988  
Square Feet, more or less.



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**Kualono Subdivision  
Description of Easement D-5**

A Drainage Easement D-5 in favor of Kualono Homeowner's Association, over and across a portion of Lot 4 of Kualono Subdivision (File Plan 2488), also affecting a portion of Land Patent Grant 4006 to Joe de Freitas Phillips at Keahua, Kula, Maui, Hawaii and being more particularly described as follows:

Beginning at a point at the southeasterly corner of this easement, being also the southeasterly corner of Lot 4 and the southwesterly corner of Lot 5 of Kualono Subdivision (File Plan 2488), the coordinates of said point of beginning referred to Government Survey Triangulation Station "PIIHOLO" being 8,160.61 feet South and 13,590.01 feet West and running by azimuths measured clockwise from True South:

1. Thence along Lot 51 (Lei'ohu Circle) of Kualono Subdivision (File Plan 2488) on a curve to the left, with the point of curvature azimuth from the radial point being:  
123° 02' 28" and the point of tangency azimuth from the radial point being:  
122° 16' 36", having a radius of 145.00 feet, the chord azimuth and distance being:  
32° 39' 32" 1.93 feet;
2. Thence along same on a curve to the right, with the point of curvature azimuth from the radial point being:  
302° 16' 36" and the point of tangency azimuth from the radial point being:  
305° 32' 56", having a radius of 145.00 feet, the chord azimuth and distance being:  
33° 54' 46" 8.28 feet;
3. 135° 26' 118.54 feet along the remainder of Lot 4 of Kualono Subdivision (File Plan 2488);

4. 223° 10' 10.01 feet along same;
5. 315° 26' 116.85 feet along Lot 5 of Kualono Subdivision (File Plan 2488) to the point of beginning and containing an Area of 1,178 Square Feet, more or less.



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**Kualono Subdivision  
Description of Easement D-6**

A Drainage Easement D-6 in favor of Kualono Homeowner's Association, over and across a portion of Lot 3 of Kualono Subdivision (File Plan 2488), also affecting a portion of Deed of Minister of Interior to W.H. Bailey at Keahua, Kula, Maui, Hawaii and being more particularly described as follows:

Beginning at a point at the southwesterly corner of this easement, being also the southeasterly corner of Lot 2 and the southwesterly corner of Lot 3 of Kualono Subdivision (File Plan 2488), the coordinates of said point of beginning referred to Government Survey Triangulation Station "PIIHOLO" being 8,309.27 feet South and 13,738.53 feet West and running by azimuths measured clockwise from True South:

1. 135° 26' 104.20 feet along Lot 2 of Kualono Subdivision (File Plan 2488);
2. 225° 26' 10.00 feet along the remainder of Lot 3 of Kualono Subdivision (File Plan 2488);
3. 315° 26' 104.34 feet along same;
4. 46° 16' 10.00 feet along Lot 51 (Lei'ohu Circle) of Kualono Subdivision (File Plan 2488) to the point of beginning and containing an Area of 1,043 Square Feet, more or less.



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**Exhibit D**  
**Description of Easement V-1**

Easement V-1 over and across a portion of Lot 31 of Kualono Subdivision (File Plan 2488), also affecting a portion of Deed of Minister of Interior to W.H. Bailey at Keahua, Kula, Maui, Hawaii and being more particularly described as follows:

Beginning at a point at the southeasterly corner of this easement, being also the southeasterly corner of Lot 31 of Kualono Subdivision (File Plan 2488), the coordinates of said point of beginning referred to Government Survey Triangulation Station "PIIHOLO" being 8,961.80 feet South and 13,812.92 feet West and running by azimuths measured clockwise from True South:

1.     130°   17'    20"    108.42 feet    along Lot 11 of Partition of Manuel F. Phillips Estate and Lot 4 of Boteilho Estate 1 Subdivision, being also along the remainder of Deed of Minister of Interior to W.H. Bailey;
2.     220°   20'            56.44 feet    along Lot 50 of Kualono Subdivision (File Plan 2488);
3.     Thence along same on a curve to the left, with the point of curvature azimuth from the radial point being: 310° 20' and the point of tangency azimuth from the radial point being: 309° 03' 54", having a radius of 200.00 feet, the chord azimuth and distance being: 219° 41' 57" 4.43 feet;
4.     324°   47'    57"    127.73 feet    along the remainder of Lot 31 of Kualono Subdivision (File Plan 2488);
5.     68°    06'    30"    32.64 feet    along Lot 11 of Partition of Manuel F. Phillips Estate, being also along the remainder of Deed of Minister of Interior to W.H. Bailey to the point of beginning and containing an Area of 5,327 Square Feet, more or less.

SUBJECT, HOWEVER, to the following:

1.     A portion of an existing Waterline Easement W-1 in favor of Hanohano LLC.
2.     A portion of an existing Building Setback, Landscape and Drainage Easement L-4 in favor of Kualono Homeowner's Association.